

**RULES
OF
THE TENNESSEE ETHICS COMMISSION**

**CHAPTER 0580-1-2
ACCESS TO PUBLIC RECORDS OF THE TENNESSEE ETHICS COMMISSION**

TABLE OF CONTENTS

STAFF DRAFT FOR COMMISSIONER REVIEW

The following draft is based upon Commissioner Knight's draft of April 23, 2007, and based upon the Commissioners' discussion at the April 2007 Commission meeting.

0580-1-2-.01 Purpose and Scope

0580-1-2-.02 Definitions

0580-1-2-.03 Requests for Inspection or Reproduction of Public Records

0580-1-2-.04 05 Fees and Costs for Reproduction of Public Records

0580-1-2-.01 PURPOSE AND SCOPE.

A suggestion was made to add a reference in the rules regarding the location of the records. Rather than identifying a particular location (which could change without notice), this suggestion has been implemented by adding a provision clarifying that these rules relate to those records which are within the custody and control of TEC

These rules are promulgated for the purpose of providing procedures to allow access to those records which are within the custody and control of the Tennessee Ethics Commission, and that are within the definition of public records in the Tennessee Public Records Act, T.C.A. §§ 10-7-501, *et seq.*; and are not within any exception, privilege, court decision, statute, common law principle, or other provision of law that excludes the public record from being available for inspection and copying by members of the public. These rules are also promulgated for the purpose of implementing and establishing fees to be charged for reproduction of records or for the development of records in a specific format.

A question was asked regarding whether these rules needed to include a reference to the Records Management division. The Records Management division of the Department of General Services is primarily concerned with the creation of new forms, and the archive and destruction of records. Most of these processes are provided to us by the Secretary of State's office, and these processes are otherwise not relevant to these record rules.

0580-1-2-.02 DEFINITIONS.

- (1) Act. The Tennessee Public Records Act, T.C.A. §§ 10-7-501, *et seq.*
- (2) Commission. The Tennessee Ethics Commission.
- (3) Executive Director. The Executive Director of the Tennessee Ethics Commission.
- (4) Non-routine Copy. A copy, whether of paper or of electronically stored data, which, to be made, requires more than minimal staff assistance, e.g., odd or oversize pages, bound documents which must be disassembled before copying and reassembled after copying, an unusually large number of copies, or manipulation or retrieval of electronically stored data.
- (5) Public Record. For purposes of this Chapter, any Record of the Commission that is within the definition of public records in T.C.A. § 10-7-503(a), with the proviso that a document that is a public record as defined by the Act may be within an exception otherwise provided by law pursuant to T.C.A. § 10-7-503(a), and therefore may not be subject to inspection or copying.
- (6) Record. For the purposes of this Chapter, any data and/or documents developed and maintained by the

Commission, on paper, magnetically, or electronically, on a single computer or computer system, whether on disk, tape or otherwise, or that have been received and are maintained by the Commission, during the normal course of the Commission's activities. A Record may or may not be a Public Record.

- (7) Routine Copy. A copy, whether of paper or of electronically stored data, which, to be made, requires minimal staff assistance, e.g., pages which are either 8½ x 11 or 8½ x 14 and can be automatically printed from electronically stored records or automatically fed into a standard copier. Any Public Records, even if stored electronically or magnetically, shall not be deemed Routine Copies if it is necessary to print the copies of the Public Records by means of a separate screen-print for each individual page of the Record.

Authority: T.C.A. § 4-5-201 et seq., 3-6-107; 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001).

0580-1-2-.03 REQUESTS FOR INSPECTION OR REPRODUCTION OF PUBLIC RECORDS.

- (1) A request to the Commission for inspection or reproduction of Public Records may be made in person, via telephone, via e-mail, postal mail, or facsimile transmission. The request shall identify with reasonable specificity the Public Record, set or system of Public Records which is being requested. ANNE, MY NOTES SAY THAT THEY WANTED TELEPHONE REQUESTS TO BE FOLLOWED UP WITH A WRITTEN REQUEST.
- (2) Before providing inspection or reproduction of the requested Public Record, Commission staff shall review the requested Public Record or Public Records as quickly as reasonably possible, consistent with the availability of appropriate staff and with regard to the scope of the records request, and assess the status of the Public Records and the scope of the request.
- (3) Upon review and prior to the release of the requested Record, the Commission's staff may redact any such data or information in the Record that it has reason to believe contains, or may contain, confidential, privileged or otherwise protected materials, as such protected materials are referred to in T.C.A. § 10-7-503(a), incorporating other provisions of law and which are not to be inspected or reproduced. **STILL NEED TO DETERMINE HOW ANY DISPUTE ABOUT WHETHER A PUBLIC RECORD CAN BE WITHHELD WILL BE RESOLVED IN ORDER TO AVOID A LAWSUIT OR UAPA PROCEEDING. NEED PROCEDURE TO RESOLVE THESE QUESTIONS WITHOUT LITIGATION.**

See paragraph (5) below. It is recommended that the procedures which are placed in the rules be limited to notice and an opportunity for review – while helping to ensure consistency, adding dispute procedures to the rules creates a set of rights in addition to what is already in statute, and the creation of new rights opens new avenues of liability.

- (4) If it appears from the Commission's review and assessment that the requested record is a Public Record and inspection and/or reproduction of the Public Record is permissible and is not protected, but that inspection and/or reproduction of the Public Record, or the system of Public Records, cannot be immediately provided, then the Commission shall so inform the individual making the request. The Commission shall provide a reasonable estimate of the time that will be required to comply with the request and an explanation of why it is not immediately available.
- (5) Denial of Request to Inspect and/or Reproduce Requested Record. If it appears from the Commission staff's review and assessment that the requested record is protected and not subject to inspection or reproduction pursuant to state or federal law, Commission staff shall provide notice to the requesting individual or entity which states the legal basis for the denial. Upon receiving such notice, the requesting individual or entity may submit to the Commission a written request to review the Commission staff's denial of the record request. The Commission shall review such request in consultation with the Office of the Attorney General & Reporter and shall provide written notice to the requesting individual or entity upholding or overturning the Commission staff's denial of the record request.

Authority: T.C.A. §§ 4-5-201 et seq., 3-6-107; 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001).

0580-1-2-.04 FEES AND COSTS FOR REPRODUCTION OF PUBLIC RECORDS.

This section has been edited in order to provide a "fee schedule" format in a manner similar to that used by the TennCare Bureau. A copy of the "Bureau of TennCare/Medicaid" rules are attached for the Commissioners' reference.

- (1) Fees and costs for the reproduction of Public Records are as follows; provided, however, that if a contractor, consultant or specialist is used to fulfill the reproduction request then the fee charged shall be the actual costs related to reproduction of the Public Record which were invoiced to the Commission:

Service	Fee
(a) Routine Copies on paper	\$0.25 per one-sided page \$0.30 per two-sided copy.
(b) Non-Routine Copies on paper	\$0.50 per one-sided page \$0.60 per two-sided copy.

AGAIN, ARE THESE CHARGES (1) AND (2) CONSISTENT WITH WHAT OTHER AGENCIES CHARGE? HOW WERE THESE AMOUNTS DETERMINED? WHAT IF OVER TIME AN INCREASE IS LEGITIMATELY NEEDED – DO WE HAVE TO GO THROUGH A NEW RULEMAKING PROCEEDING? WOULD IT BE BETTER TO SET A MAXIMUM, WHILE ACTUALLY CHARGING LESS, BUT ALLOWING CHARGE TO INCREASE OVER TIME?

As previously discussed, the majority of agencies do not have rules for charging for copies. Of those that do, the costs range from a low of \$.10 per page charged by the Department of Environment and Conservation, to a high of \$.75 per page charged by the Bureau of TennCare. The fees proposed in these rules appear to be a typical average of most agencies.

- | | |
|----------------------|-----------------|
| (c) Copies on CD-Rom | \$5.00 per disk |
|----------------------|-----------------|

Several agencies charge \$10.00 for CD-Rom copies, but because CD burners are now standard equipment and the costs of blank writeable disks have decreased, in the year 2007 such a fee would be higher than that reasonably needed by the Commission to recoup costs. TennCare charges \$0.60 "per 1,000 lines", which is a method of computing costs that is no longer necessary now that copying a file onto CR-Rom is actually quicker and easier than paper copies.

The TennCare Bureau charges a flat rate for any reproduction, including faxes. This has been amended in order to reduce the costs to the public for those services that would incur only minimal costs for the Commission.

- | | |
|---|---|
| (d) E-mail of electronic files | No Charge |
| (e) Postal mail of paper files | Actual postage fees
incurred by Commission |
| (f) Facsimile Transmission | No Charge, 10 pages or less
\$5.00, 10 pages or more |
| (g) Computer programming time, when necessary to place the Public Records in a readable and reproducible format or in a specific reproducible format that is requested by the person or entity seeking copies of the Public Record. | \$18.00 per half hour |
| (h) Minimum total charge for the computer programming time set forth in paragraph (f), above. | \$108.00 per hour |

- (i) Prior to copies being made, or prior to developing a specific format for the reproduction of Public Records, payment in full must be made to the Commission. Payment shall be made by cashier's check or money order made payable to the Tennessee Ethics Commission, and be delivered to the Commission's office; provided, however, that amounts equal to or less than Ten Dollars (\$10.00) may be made in cash; provided further, notwithstanding the fee schedule set forth in this section, the Executive Director may, in his or her discretion, waive payment if the total costs of reproduction are less than one dollar (\$1.00)... **WHAT IF THE REQUEST INVOLVES CREATING OR MODIFYING A SOFTWARE PROGRAM AND WE DECIDE TO CHARGE FOR THAT AS AN OUT OF POCKET EXPENSE? DO WE GET AN ADVANCE PAYMENT OF AN ESTIMATED COST, BUT IF THE ACTUAL COST IS GREATER THAN THE ESTIMATE, WE REQUIRE PAYMENT OF THE BALANCE BEFORE TURNING OVER THE COPIES?**

Under the current draft of the rules, the cost would be that actually invoiced to the Commission, and payment must be made in full prior to the copies being made – thus they would be required to pay the balance prior to the copies being turned over.

- (7) Copying by Requesting Person or Entity.

Moved from paragraph (3) above per April 2007 Commission meeting:

- (a) All Public Records shall remain in the sole custody of Commission staff. No original Public Records shall be placed in the custody of the person making the request.
- (b) The Executive Director may, in his or her discretion, permit the individual requesting the record(s) to supply the necessary equipment and supplies to make the requested copies where the records are housed or located for purposes of the records request.
- (c) In the event that the person making the request reproduces the Public Records, the Executive Director may, in his or her discretion, waive all or any portion of the costs associated with such reproduction as computed in accordance with the provisions of this Chapter.
- (d) The Executive Director may, in his or her discretion, require that Commission staff observe the reviewing process permitted by this paragraph for the purpose of protecting the integrity of the Public Records, and the costs of staff time necessary for this purpose may be charged pursuant to this Section.

Authority: T.C.A. §§ 4-5-201 et seq., 3-6-107; 10-7-503 and 10-7-506; *Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998); and *Op. Tenn. Atty. Gen. 01-021* (Feb. 8, 2001).